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(4)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT
BILASPUR

W.P.NO. 1518 / 2004 /

Petitioner

P. R. No. 1518/04
Presented by Shri. Jay Deshmukh
dated 22.06.04

Dr. O.P. Tiwari S/o G.P. Tiwari,
Aged about 40 years,
Assistant Surgeon,
Veterinary Department,
R/o Veterinary Hospital Campus,
Bilaspur, District-Bilaspur (CG).

Versus

Respondents

- 1) State of Chhattisgarh
Through the Secretary,
Animal Husbandry, DKS Bhawan,
Raipur, District-Raipur (CG)
- 2) The Director,
Veterinary Health Services,
Opp. Ghassidas Mahant
Granthalaya, Near Collector Office,
Raipur, District-Raipur (CG).
- 3) The Joint Director,
Veterinary Health Services,
1st Floor, Composite Building,
Opp. Collectorate Bilaspur,
District-Bilaspur (CG).

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16/04
Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA

1. Particulars of the Petitioner :

As mentioned in the cause title above.

Particulars of the respondents :

As mentioned in the cause title above.



HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri Sunil Kumar Sinha, J.

WRIT PETITION NO. 1518 OF 2004

Dr. O.P. Tiwari

Versus

State of Chhattisgarh & Others

Present: Petitioner in person.

Mr. Yashwant Singh, learned Govt. Advocate for the
respondents / State.

ORDER
(Passed on 6th May 2005)

The following Order of the Court was passed by
A.K. Patnaik, CJ: -

The petitioner is an employee of Veterinary Department of Government of Chhattisgarh and was posted as In-charge, Veterinary Disease Investigation Laboratory, Bilaspur in September 1992. By an order dated 31.05.2003 he was transferred from Bilaspur to Korba and Dr. S.P. Singh was transferred from Korba to Bilaspur and posted in his place. On 06.10.2003, the Government of Chhattisgarh cancelled the said transfer order dated 31.05.2003. Thereafter, on 12.11.2003 the Government of Chhattisgarh stayed the said order dated 06.10.2003 canceling the order of transfer dated 31.05.2003. The result was that the order of transfer dated 31.05.2003 transferring the petitioner from Bilaspur to Korba became effective and the petitioner was required to join in his transferred post at Korba, but the petitioner did not join at Korba and on 25.03.2004 an order of suspension was passed by the Director, Veterinary Health Services, Government of Chhattisgarh / respondent No.2. As a result of the order of suspension, the petitioner was not paid his salary. Subsistence allowance payable under the relevant rules for the Government servants placed under suspension was remitted to the

petitioner but the same was not accepted by the petitioner. The petitioner has filed this writ petition praying for a direction to the respondents to pay his salary with effect from June, 2003.

2. In a separate writ petition numbered as W.P.No.1571 of 2004, the petitioner had challenged the order of transfer dated 31.05.2003 and a subsequent order dated 05.06.2004 by which the earlier order dated 06.10.2003 canceling the said order of transfer had been cancelled and by an order delivered today we have refused to interfere with the said order of transfer dated 31.05.2003 as well as the order dated 05.06.2004 impugned in writ petition No.1571 of 2004 and have also vacated the interim order of status quo passed in the said writ petition. In view of the order passed today, the dispute raised by the petitioner with regard to his transfer from Bilaspur to Korba has been put to an end and the petitioner will now have to join at Korba pursuant to the aforesaid orders dated 31.05.2003 and 05.06.2004 of the State Government.

3. But it appears that so long as the order of suspension continues to be in force the petitioner will not be entitled to the salary but would be entitled to subsistence allowance in accordance with the rules. Despite subsistence allowance being remitted by the authorities, the petitioner has been refusing to accept the same on the ground that he is entitled to his salary and not subsistence allowance. The petitioner who has appeared in person submitted that he is entitled to the salary because of the fact that the order of suspension is illegal and contrary to the rules.

4. In view of the said stand taken by the petitioner before us, we have proceeded to examine the legality of the suspension order even though no relief has expressly been claimed in the writ petition for quashing the order of suspension.

5. After hearing the petitioner as well as the Mr. Yashwant Singh, learned Govt. Advocate for the State, we find that the order of suspension has been passed by the Director of Veterinary Health Services, Government of Chhattisgarh / respondent No.2 but it appears that the Director, Veterinary Health Services, Government of Chhattisgarh is not the appointing authority nor the authority empowered by the Governor by general or special order to place the petitioner under suspension.

6. Rule 9(1) of the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 which have been adapted by the State of Chhattisgarh and which therefore in force also in the State of Chhattisgarh is quoted herein below:

"9.(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order, may place a Government servant under suspension-

- (a) where a disciplinary proceeding against him is contemplated or is pending, or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry of trial;

[Provided that a Government Servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him;]

Provided further that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made."

The plain language of Rule 9(1) makes it clear that it is the appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any authority empowered in that behalf by the Governor by general or special order who may place him under suspension.

7. Mr. Yashwant Singh, learned Government Advocate for the State very fairly conceded that the Director, Veterinary Health Services, Government of Chhattisgarh is not the appointing authority or disciplinary authority of the petitioner and instead the State Government is the appointing authority of the petitioner and the Secretary, Agriculture (Veterinary) is the disciplinary authority of the petitioner. No general or special order of the Governor has been produced before us to show that the Director, Veterinary Health Services had been generally or specially empowered to place the petitioner under suspension. Thus, it appears that the order of suspension was passed by an authority who was not empowered under Rule 9(1) of the M.P. Civil Services (Classification,

Control and Appeal) Rules, 1966 to place the petitioner under suspension. The order of suspension is, therefore, without any authority of law and was null and void and was liable to be quashed.

8. For the aforesaid reasons, we quash the order of suspension dated 25.03.2004 and direct the respondents to consider the claim of the petitioner for his salary in accordance with the relevant rules and pass appropriate orders and communicate such orders to the petitioner within a period of one month from today ignoring the order of suspension that we have quashed.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge